AGREEMENT BETWEEN CITY OF SUNNYVALE AND THE SUNNYVALE GARDEN CLUB

THIS AGREEMENT dated June 1, 2004 is by and between the CITY OF SUNNYVALE, a municipal corporation, and The Sunnyvale Garden Club.

WHEREAS the City desires to support independent organizations providing services beneficial to the Community; and,

WHEREAS the Sunnyvale Garden Club, a non-profit organization, wishes to provide services beneficial to the Community; and,

WHEREAS the Sunnyvale Garden Club desires to use certain Sunnyvale Parks and Recreation Facilities for a cost reduced from that dictated by established City facility rental rates;

NOW THEREFORE, in accordance with The City's Relationships with Outside Groups Policy, the City and the Sunnyvale Garden Club enter into this agreement.

1. Obligations of City:

CITY shall:

a) Provide CLUB use of the Sunnyvale Heritage Center Multi-Purpose Building for a three and one-half hours period one (1) day per month for membership meeting at no charge to CLUB;

b) Provide CLUB one (1) picnic reservation for one (1) reservable picnic site at Raynor Park for one (1) date during the month of June yearly at no charge to CLUB;

c) List CLUB and its scheduled activities in the Department of Parks and Recreation Activity Guides;

d) Provide CLUB two keys to Sunnyvale Heritage Center Multi-Purpose Building, Garden Building and Storage;

e) Provide one (1) reservation for one (1) date in spring yearly for the Community Center ballroom for a fundraising activity for a maximum of eight (8) hours at a reduced rate of 15% of the current published non-profit rental rate.

2. Obligations of CLUB

CLUB shall:

a) Maintain portions of the Sunnyvale Heritage Center landscapes and grounds, as designated on Appendix A at no cost to the City;

b) Teach classes in container gardening to be offered at Sunnyvale Heritage Center once per month for the months of May, July, August and September, at no cost to the City.

c) Comply with all Federal, State and local laws.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CLUB shall not accept employment or an obligation which is inconsistent or incompatible with CLUB'S obligations under this Agreement.

4. Compliance with Laws

a) CLUB shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

b) CLUB shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

5. Independent CONTRACTOR

CLUB is acting as an independent contractor in furnishing any services or materials and performing work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CLUB. CLUB is responsible for paying all required state and federal taxes.

6. Indemnity

CLUB agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of GROUP, its officers, employees, agents, members or any officer, agent or employee thereof in relation to CLUB'S performance under this Agreement.

7. Insurance

CLUB shall and will, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

(a) Combined single limit coverage applying to bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars ($1,000,000) providing coverage on an "occurrence" basis and not an "accident" basis; provided, however, as follows:

(1) CITY shall be named as an additional insured in all insurance policies;

(2) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include liability assumed under paragraph 6 above; and,

(3) A product liability endorsement shall be added to each insurance policy in the minimum amount of Ten Thousand Dollars ($10,000) for each person and Twenty Thousand Dollars ($20,000) for any single occurrence.

(b) Worker's compensation insurance and employer's liability insurance for all employees of Licensee.

8. CITY Representative

Parks Division liaison or such other person as may be designated by the Director of Parks and Recreation of CITY, shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

9. CLUB Representative

Sunnyvale Garden Club President shall represent CLUB in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CLUB pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CLUB representative.

10. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:	City Manager CITY OF SUNNYVALE P. O. Box 3707 Sunnyvale, CA 94088-3707 (408) 730-7480
To Sunnyvale Garden Club:	Nellie Durand, President 1636 Vireo Ave. Sunnyvale, CA 94087-5149

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to e-mail constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

11. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

12. Duration of Agreement

This Agreement shall continue from the date of execution for a period of five years, unless otherwise terminated in accordance with section 13 below.

13. Termination

(a) If CLUB defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving sixty (60) days written notice to CLUB.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party.

14. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

15. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

_____
City Clerk

CITY OF SUNNYVALE ("CITY")

By_____
City Manager

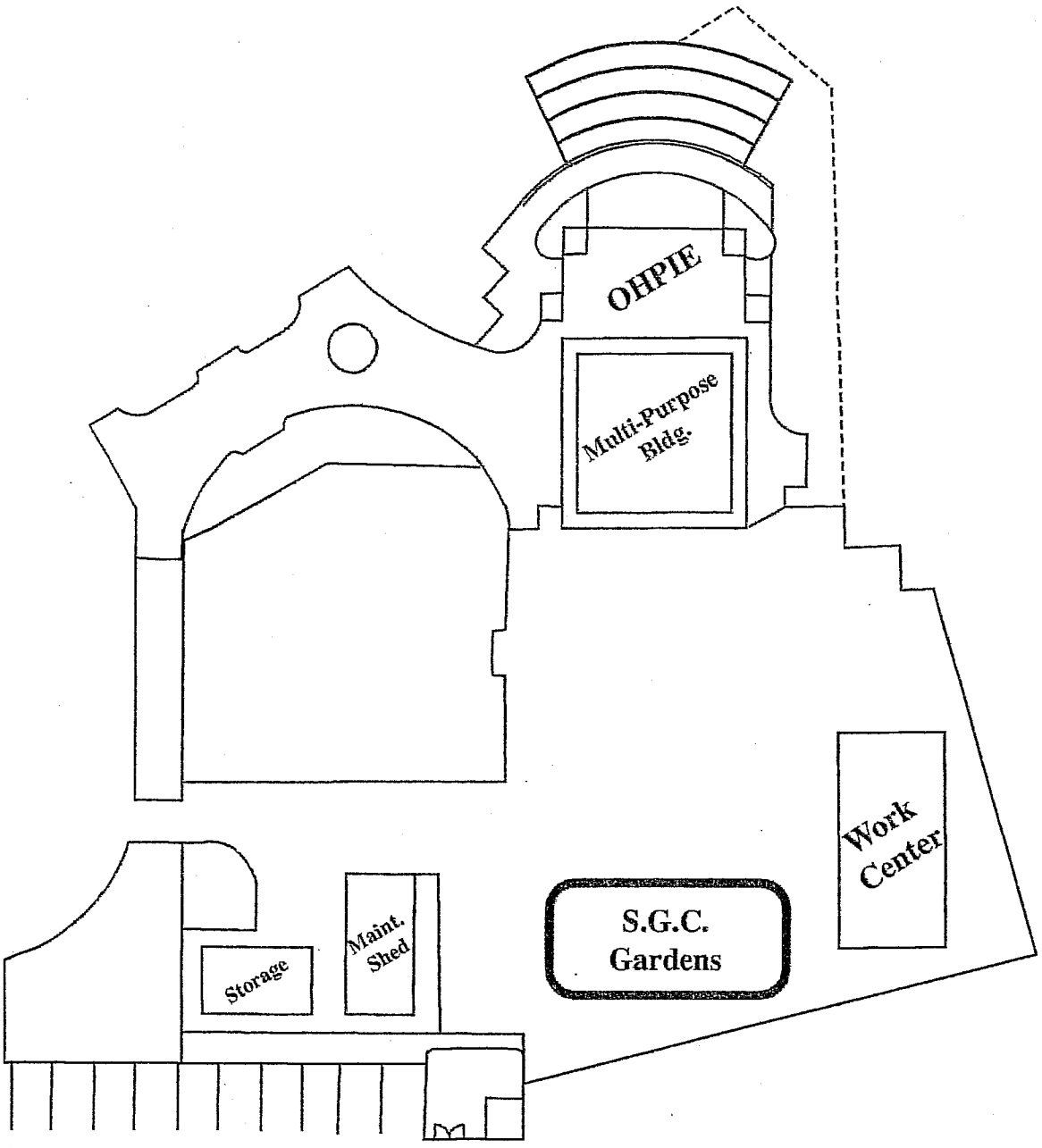
APPROVED AS TO FORM:

_____
City Attorney

SUNNYVALE GARDEN CLUB

By_____
Nellie Durand, President

Appendix A



SUNNYVALE HERITAGE CENTER

NOT TO SCALE

.95 Acres

Revised 4/03